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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,588	08/19/2003	Uwe Rausch	000137.00028	2932

22907 7590 03/08/2005

BANNER & WITCOFF  
1001 G STREET N W  
SUITE 1100  
WASHINGTON, DC 20001

EXAMINER
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REESE, DAVID C

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/642,588

Applicant(s)

RAUSCH ET AL.

Examiner

David C. Reese

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☒ Claim(s) 5-6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

The following is in response to the amendment filed by applicant 1/26/2005.

### ***Status of Claims***

[1] Claims 1-6 are pending.

### ***Claim Objections***

[2] In light of applicant's amendment submitted 1/26/2005, the examiner's objection to Claim 6 is hereby withdrawn.

### ***Response to Arguments***

[3] Applicant's amendment, see amendment and remarks filed 1/26/2005, with respect to the rejection(s) of claim(s) 1-4 under Fell, US 2,940,784 have been fully considered, but the amended statement in its most broad interpretation still renders Claims 1-4 as being anticipated by a U.S.C. 102 (b) under Fell (please Claim rejections below).

The arguments regarding the U.S.C. 103 rejection, however, have been considered and are deemed persuasive, so thus, the 103 rejections for claims 1, 4 and 5 are hereby withdrawn.

*Claim Rejections - 35 USC § 102*

[4] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[5] Claims 1-4 remain rejected under 35 U.S.C. 102(b) as clearly anticipated by Fell, US 2,940,784, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

The shape and appearance of Fell is identical in all material respects to that of the claimed design, *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997).

a. Claim 1. Fell shows and discloses a securing device for a structural component (6,27) to be secured to a panel (5) with a tubular piece (9) inserted into a penetration in the panel (5), and a screw (18) inserted into the tubular

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piece (9), said screw (18) being supported with its head (20) on one end of the tubular piece (9) and holding the structural component (6,27) with its threaded part (19), said structural component (6,27) contacting the other end of the tubular piece (9), said tubular piece (9) being screwed an optional distance into the penetration for axial adjustment, characterized in that the tubular piece contains a distance detector (16), wherein, when the tubular piece (9) is at a distance from the structural component (6, 27), said distance detector (16) is in its starting position projecting out of said tubular piece (9) on its side facing away from the screw head (20) and, when the tubular piece (9) is screwed to contact with the structural component (6, 27), said distance detector (16) is slideably displaced relative to the tubular piece.

First, as pointed out in the preceding office action, the term “wherein” only requires that the prior art device be capable of performing the functions recited therein.

Secondly, it must be noted that:

Claims in a pending application should be given their broadest reasonable interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974).

Thus, beginning with the term “screwed to,” one can discern that, (9), designated the tubular piece in Fig. 1, has the ability to be screwed to, and more specifically in this case, screwed to contact the structural component, and, as shown in Fig. 1, the tubular piece (9) does indeed possess the ability to be screwed downward until it reaches the structural components (6, 27).

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Secondly, moving on to the term slideably (term of which occurs when the tubular piece is being screwed to contact the structural component), which, in its broadest reasonable interpretation can mean the displacement that occurs as a result of the threading nature between two pieces (in this case the tubular piece (9) and the distance detector (16)). That is, they may be able to be displaced from one another via threads instead of, for example, a smooth surface; as such a displacement between two pieces still renders the movement as a slideable movement. Further, one definition as stated by Merriam-Webster's Collegiate Dictionary tenth edition for slide is as follows: "to change position or become dislocated: Shift."

Thus, as the tubular member (9) is being screwed down toward the structural components (6, 27), the position of the distance detector (16) is being slideably displaced (via the downward threading of the tubular member), thus displacing or shifting the distance detector relative to the tubular piece.

Examiner understands the invention and what the applicant is trying to convey in the claim language, but the addition of the terms "screwed to" and "slideably" still render the latter part of the claim as too broad, and does not distinguish the claimed invention properly from that of the disclosed prior art. Examiner suggests adding other structural differences to be combined with the function of the device as to help best distinguish the invention from others.

Since claims 2-4 were not amended, and remain dependent upon Claim 1, they thus retain the same rejection as stated in the previous office action.

***Allowable Subject Matter***

[6] Claims 5-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

[7] The following is a statement of reasons for the indication of allowable subject matter: the prior art, including Fell, Pinzl, Cable, and Brehmer, either alone or in combination with corresponding limitations as stated above, fails to teach or disclose that of a distance detector forced into its starting position by a spring element, and that this spring element consists of oblique surfaces disposed on the sleeve on its side facing away from the screw head, said oblique surfaces cooperating with sloping faces at the relevant end of the tubular piece.

***Conclusion***

[8] Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is 703-305-4805. Due to a future move, however, this number will change after the 31st of March. After this date, the examiner can be reached at (571) 272- 7082. The examiner can normally be reached on 7:30 am - 5:00 pm M-Th, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (703) 306-4115. The fax

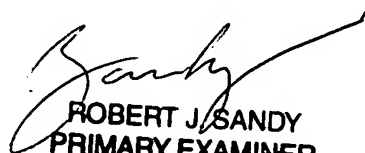


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phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,  
David Reese  
Examiner  
Art Unit 3677

  
**ROBERT J. SANDY**  
**PRIMARY EXAMINER**